

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Ryan

MAILED: July 24, 2003

Concurrent Use No. 1157

Carver Brewing Company

v.

Paragon of Michigan, Inc.

Before Hanak, Bottorff, and Rogers,  
Administrative Trademark Judges.

By the Board.

On September 28, 2001, Carver Brewing Company ("CBC") filed a motion to terminate the concurrent use proceeding and a copy of a settlement agreement between the parties. On May 14, 2002, the Board issued an order effectively deferring action on the motion because the settlement agreement permitted CBC to claim rights in a location which falls outside of the territory identified in the its involved application, Serial No. 75/363,285. In that order, the Board permitted CBC time to file an amendment to its application to conform the statement of territorial restriction in the application to the terms of the parties' settlement agreement.

This case now comes up for consideration of CBC's June 17, 2002 motion to amend application Serial No. 75/363,285 to add the county of San Juan, New Mexico to CBC's claimed area of

use. Although the Board has not received a response from Paragon of Michigan, Inc. ("Paragon"), it is presumed that Paragon, by virtue of the settlement agreement, has consented to the proposed expansion of CBC's claimed territory of use.

In view thereof, we hereby grant the motion to amend. See Trademark Rule 2.133(a). The proposed amendment to the territorial restriction in Application Serial No. 75/363,285 is noted and entered. Inasmuch as CBC is changing its claimed area of use and CBC's area of use now includes a more expansive territory than that claimed in the application when published, the mark will be republished for opposition upon conclusion of this proceeding.

Because we now have a complete and effective settlement agreement, this case is ready for final decision.

In the amended application, and in accordance with the parties' settlement agreement, CBC seeks to register the mark CARVERS (in typed form) for "restaurants" in International Class 42 for the counties of Archuleta, Dolores, La Plata, Montezuma, and San Juan in Colorado and the county of San Juan in New Mexico (such counties hereinafter referred to as "the territory"). Also, the parties have agreed that, pursuant to its existing federal registration, No. 1,757,386, "Paragon shall have exclusive rights to the CARVERS mark for 'restaurant services' in all other areas within the United States."

A concurrent use applicant bears the burden of proving its entitlement to a concurrent use registration and must prove

that there is no likelihood of confusion attributable to the concurrent use of its mark and the marks of any other parties recited as exceptions to the applicant's rights. See Trademark Act Section 2(d) and *Meijer, Inc. v. Purple Cow Pancake House*, 226 USPQ 280 (TTAB 1985).

In the settlement agreement, the parties state that neither party is aware of any instance of actual confusion between their respective marks. Additionally, the parties agree: to conduct business under their similar marks only in their separate geographic areas; that CBC is the senior user of the CARVERS mark in its territory and is entitled to use and concurrent use registration of its mark based upon the agreed geographical limitations; and that the parties will take any further action and execute any further agreements as necessary to carry out the spirit and intent of their settlement agreement. Finally, the parties concur that, the geographical limitations set out in their agreement are sufficient to avoid any likelihood of confusion in the marketplace between their respective marks.

Inasmuch as the parties have agreed to a mutually exclusive geographic division of the United States and to take appropriate steps to avoid creating confusion among consumers, we find that the parties have established prima facie that concurrent use of the parties' marks is not likely to cause confusion, mistake or deception. See Trademark Act Section 2(d). Accordingly, it is adjudged that: (1) subject to the

republication of Application Serial No. 75/363,285 and any consequential opposition that may be filed,<sup>1</sup> applicant CBC is entitled to the concurrent use registration for which it has made application; and (2) the registration of registrant Paragon shall be restricted to reflect the parties' agreement to establish mutually exclusive territories.

**Decision:**

Carver Brewing Company is entitled to a concurrent use registration of its mark CARVERS for "restaurant services" in International Class 42 (Serial No. 75/363,285) for the counties of Archuleta, Dolores, La Plata, Montezuma, and San Juan in Colorado, and the county of San Juan in New Mexico.

The registration of Paragon of Michigan, Inc. for its mark CARVERS for "restaurant services" in International Class 42 (Registration No. 1,757,386) shall be restricted to the area comprising the entire United States, except the counties of Archuleta, Dolores, La Plata, Montezuma, and San Juan in Colorado, and the county of San Juan in New Mexico.

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<sup>1</sup> Following republication, if no oppositions are lodged, the involved application will go forward in its amended form for issuance of a concurrent use registration in accordance with this decision and the parties' settlement agreement.